

Conservation Program Contracts (CPCs)
Recovery of Costs for Cancellation and Termination
Tennessee-September 2006

Policy for contract cancellation or termination is found in Conservation Program Contracting (CPC), Part 512.57-58 of the 440-V-Conservation Programs Manual, Amendment 30, August 2005. A CPC may be either cancelled by both parties, or terminated for cause by NRCS. In either event, the obligations contained in the CPC are ended through action that annuls the responsibilities of both parties to the contract. The participant is informed in writing of forfeiture of all future payments under the contract and repayment requirements, as applicable.

CANCELLATION: equitable remedy that allows both parties to the contract to end the contractual relationship. Contract participants must request cancellation **in writing**, provide reasons for the cancellation request, and if applicable, provide information on availability of any transferees. Reasons for cancellation may include but are not limited to documented hardships such as major illness, bankruptcy, death, destruction of farm property through fire or theft; natural disaster preventing completion of contract provisions; and in the public interest and beyond the participant's control.

TERMINATION: result of material breach of the CPC terms and conditions (termination for cause). Terminations for cause will usually result in an assessment of liquidated damages for a recovery of costs associated with the administration of the breached contract. Termination can occur at any time if it is determined that the participant or land becomes ineligible; participant transfers ownership or loses control of land under contract; participant has violated the terms of the contract and has failed to correct and comply within a reasonable time; participant fails to install, operate or maintain one or more practices or activities required; participant's actions pose a threat to the health and safety of NRCS employees; and use of scheme or device.

RECOVERY COSTS: applies to both technical assistance and financial assistance. This includes an estimated value of technical assistance (liquidated damages) and a refund of financial assistance (cost share obligations). Refer to the CPC Appendix to determine if cost recovery applies to the contract in question.

LIQUIDATED DAMAGES: a participant may be assessed liquidated damages up to 20 percent of the total cost-share funds obligated to the contract when it was developed. **In Tennessee, contracts written prior to 2003 will not be assessed liquidated damages.** With justification, the State Conservationist (STC) has the option of waiving all or part of the liquidated damages. **WHIP contracts will not be assessed liquidated damages,** because there are no regulatory or CPC Appendix provisions that allow such an assessment. Contracts cancelled in the same fiscal year they are developed will not be assessed liquidated damages if the contract is cancelled before August 1.

EQIP AND CSP: When making contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith

effort of the participant to comply with the contract or the hardship beyond participant's control that have prevented compliance with the contract, including natural disasters or events.

WHIP: The STC may allow a participant to retain any cost-share payments received under the cost-share agreement in a proportion appropriate to the effort the participant has made to comply with the cost-share agreement, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the cost-share agreement.

When the STC determines that any refund owed can be reduced, the reduction will be based on all of the following: assurance that failure to perform the remaining practices on the contract will not impair the effectiveness of those performed; assurance that performed practices will provide conservation or environmental benefits consistent with program objectives; and assurance that performed practices will be operated and maintained by the producer for the life span of these practices.

If cost recovery is required, the State Conservationist is responsible for notifying the CPC participant. The State Conservationist will ensure that cost recovery efforts are applied consistently and equitably among contract participants. Interest will be calculated solely on the repayment of cost-share funds previously paid to the participant. The interest payment does not apply to liquidated damages or to any fund repayments waived by the State Conservationist. Interest calculations will be prepared by the Financial Management Staff at the State Office.

Compliance with program requirements and the amount of the cost recovery are appealable items, as is either denial of waiver or partial waiver of the recovery costs. Appeal rights and procedures will be followed according to Appeals and Mediation policy in Part 510 of the 440-V-Conservation Programs Manual, First Edition, Amendment 3, March 2001.

The State Conservationist in Tennessee has delegated the authority for cost recovery to the Area Conservationists. Because it would not be efficient or cost-effective, **NRCS will not pursue recovery costs and/or penalties for an amount less than \$500.**